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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Andorra,* Angola,* Argentina,* Austria,* Belgium, Bosnia and Herzegovina,* Bulgaria,* Chile,* Croatia, Cyprus,* Czechia,* France,* Denmark,* Georgia, Germany, Greece,* Honduras,* Hungary, Iceland,* Ireland,* Italy,* Liechtenstein,* Lithuania,* Luxembourg,* Malta,* Monaco,* Montenegro,* Netherlands, Panama, Paraguay, Peru,* Poland,* Portugal, Republic of Moldova,* Romania,* Slovakia,* Slovenia, Spain,* Sweden,* Switzerland, Thailand,* the former Yugoslav Republic of Macedonia,* Turkey,* Ukraine:* draft resolution

36/... Human rights in the administration of justice, including juvenile justice

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Recalling the Universal Declaration of Human Rights and all relevant international treaties, including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto, as well as the International Convention for the Protection of All Persons from Enforced Disappearance, and encouraging all States that have not ratified or acceded to the aforementioned treaties to consider doing so expeditiously,

Bearing in mind the numerous other international standards and norms in the field of administration of justice, in particular of juvenile justice, including the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the Basic Principles for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles Deprived of their

* State not a member of the Human Rights Council.

Liberty, the Guidelines for Action on Children in the Criminal Justice System, the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the Bangalore Principles of Judicial Conduct, the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,

Recalling all resolutions of the Commission on Human Rights, the Human Rights Council, the General Assembly and the Economic and Social Council relevant to the subject, in particular Human Rights Council resolutions 30/7 of 1 October 2015, General Assembly resolutions 71/188 of 19 December 2016 and Economic and Social Council resolution 2017/19 of 6 July 2017,

Recalling also Human Rights Council resolution 31/13 of 23 March 2016 on the rights of persons belonging to national or ethnic, religious and linguistic minorities, focusing on minorities in the criminal justice system,

Noting with appreciation the work of all special procedures of the Human Rights Council that address human rights in the administration of justice in the discharge of their mandates,

Noting with interest the work of all human rights treaty body mechanisms on human rights in the administration of justice, in particular the adoption by the Human Rights Committee of its general comments No. 21 (1992) on humane treatment of prisoners deprived of their liberty, No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, and No. 35 (2014) on liberty and security of person, noting with interest also the adoption by the Committee on the Rights of the Child of its general comments No. 10 (2007) on children's rights in juvenile justice, and No. 13 (2011) on the right of the child to freedom from all forms of violence, and noting with interest further the adoption by the Committee on the Elimination of Racial Discrimination of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and the adoption by the Committee on the Elimination of Discrimination against Women of its general recommendation No. 33 (2015) on women's access to justice,

Noting with appreciation the important work in the field of the administration of justice of the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime, the United Nations Children's Fund, the United Nations Development Programme, the Special Representative of the Secretary-General on Violence against Children and the Special Representative of the Secretary-General on Children and Armed Conflict,

Convinced that the independence and impartiality of the judiciary, and the integrity of the judicial system and an independent legal profession are essential prerequisites for the protection of human rights, the rule of law, good governance and democracy, and for ensuring that there is no discrimination in the administration of justice, and should therefore be respected in all circumstances,

Underlining the importance of implementing the 2030 Agenda for Sustainable Development, and recognizing the role of its goals relating to gender equality (Goal 5), reducing inequality within and among countries (Goal 10) and the promotion of just, peaceful and inclusive societies (Goal 16) for eliminating discrimination in the administration of justice,

Emphasizing that the right of access to justice for all, including access to legal aid, forms an important basis for strengthening the rule of law through the administration of justice, and acknowledging the contribution of other actors, including lawyers' associations and civil society, in providing legal aid,

Recalling that every State should provide an effective framework in which to pursue remedies to redress human rights violations or grievances and to challenge the lawfulness of detention before a court,

Emphasizing that the social rehabilitation and reintegration of prisoners should be among the essential aims of the criminal justice system so as to ensure, as far as possible, that offenders are willing and able to lead a law-abiding and self-supporting life upon their return to society,

Recognizing the importance of the principle that, except for those lawful limitations that are demonstrably necessitated by incarceration, persons deprived of their liberty retain their non-derogable human rights and all other human rights and fundamental freedoms,

Concerned about the negative impact of overincarceration and overcrowding on the enjoyment of human rights, and acknowledging that overincarceration constitutes one of the major underlying causes of overcrowding,

Underlining that prejudice and discrimination against persons belonging to vulnerable groups in the administration of justice may result in their overincarceration and overrepresentation throughout the criminal justice system, and recognizing the need for States to take measures, within the justice system, particularly the criminal justice system, to prevent discrimination against them and to enhance inclusive and representative institutions,

Aware of the need for special vigilance and safeguards with regard to the specific situation of suspects and offenders who are children, juveniles, women, persons belonging to national or ethnic, religious and linguistic minorities and other persons with increased vulnerability in the administration of justice, in particular while they are deprived of their liberty, and their vulnerability to violence, abuse, injustice and humiliation,

Recognizing that women in detention or imprisonment have certain different needs, including different health-care needs, and in this context, noting the importance of gender-sensitive justice systems,

Encouraging continued regional and cross-regional efforts, the sharing of best practices and the provision of technical assistance in the field of juvenile justice, recalling in this regard the holding of the World Congress on Juvenile Justice in Geneva, from 26 to 30 January 2015, and noting with interest its final declaration,

Reaffirming that the best interests of the child must be a primary consideration in all decisions concerning the deprivation of liberty and, in particular, that depriving children and juveniles of their liberty should be used only as a measure of last resort and for the shortest appropriate period of time, in particular before trial, and the need to ensure that, if they are arrested, detained or imprisoned, children should be separated from adults to the greatest extent feasible, unless it is considered in the child's best interest not to be,

Reaffirming also that the best interests of the child are an important consideration in all matters concerning the child and related to the sentencing of his or her parents or, where applicable, legal guardians or primary caregivers,

1. *Notes with appreciation* the report of the United Nations High Commissioner for Human Rights on non-discrimination and the protection of persons with increased vulnerability in the administration of justice, in particular in situations of deprivation of liberty and with regard to the causes and effects of overincarceration and overcrowding;[1]

2. *Reaffirms* the importance of the full and effective implementation of all United Nations standards on human rights in the administration of justice;

3. *Calls upon* States to spare no effort in providing for effective legislative, judicial, social, educative and other relevant mechanisms and procedures, as well as adequate resources, to ensure the full implementation of those standards, and invites them to assess their national legislation and practice in accordance with those standards;

4. *Invites* States to take into consideration the issue of human rights in the administration of justice in the universal periodic review procedure;

5. *Invites* Governments to include in their efforts to implement the 2030 Agenda for Sustainable Development and their national development plans the administration of justice as an integral part of the development process, and to allocate adequate resources for fair and effective justice systems, including the provision of legal aid services with a view to promoting and protecting human rights, and to address gender inequality, and invites the international community to provide an increased level of both technical and financial assistance to States and to respond favourably to their requests for capacity-building, and enhancement and strengthening of institutions concerned with the administration of justice;

6. *Stresses* the special need for continuous national capacity-building in the field of the administration of justice, including through reform of the judiciary, the police, the prosecution and the penal system, as well as juvenile justice reform, and promoting women's effective participation and equal opportunities in the judiciary and a composition of law enforcement bodies that reflects the diversity of the population;

7. *Reaffirms* that no one should be unlawfully or arbitrarily deprived of his or her liberty, and notes the principles of necessity and proportionality in this regard;

8. *Calls upon* States to apply individual criminal responsibility and to refrain from detaining persons solely on the basis of their family ties with an alleged offender;

9. *Also calls upon* States to ensure that anyone who is deprived of his or her liberty has prompt access to a competent court with the effective power to determine the lawfulness of the detention and to order release if the detention or imprisonment is determined not to be lawful by that court, as well as prompt access to legal counsel, in accordance with their international obligations and commitments;

10. *Urges* all States to consider establishing, maintaining or enhancing independent mechanisms with the mandate to monitor all places of detention, including by making unannounced visits, and to hold private interviews without witnesses with all persons deprived of their liberty;

11. *Calls upon* States to ensure a proper file and data management system on prisoners that allows the tracking of the number of persons deprived of their liberty, their detention period, offences or grounds for detention, and developments regarding the prison population, and encourages States to collect other up-to-date, comprehensive and disaggregated data that allow for the identification and prevention of discrimination in the administration of justice and overincarceration;

[1] A/HRC/36/28.

12. *Recalls* the absolute prohibition of torture and cruel, inhuman or degrading treatment or punishment in international law, and calls upon States to address and prevent detention conditions of persons deprived of their liberty that amount to torture or cruel, inhuman or degrading treatment or punishment;

13. *Calls upon* States to investigate promptly, effectively and impartially all alleged human rights violations and abuses suffered by persons deprived of their liberty, in particular cases involving death, torture and cruel, inhuman or degrading treatment or punishment, to provide effective remedies to the victims, and to ensure that detention administrations cooperate fully with the investigating authority and preserve all evidence;

14. *Encourages* States to address overcrowding in detention facilities by taking effective measures, including through enhancing the availability and use of alternatives to pretrial detention and custodial sentences, access to legal aid, mechanisms for crime prevention, early release and rehabilitation programmes and the efficiency and capacity of the criminal justice system and its facilities, and to make use in this regard of, inter alia, the United Nations Office on Drugs and Crime Handbook on strategies to reduce overcrowding in prisons;

15. *Urges* States to take all necessary measures to prevent and eliminate discrimination in law and in practice against persons belonging to vulnerable groups in the administration of justice that may also result in their overincarceration and overrepresentation throughout the criminal justice process;

16. *Also urges* States to pay special attention to the conditions of detention or imprisonment of persons with increased vulnerability and their particular needs;

17. *Calls upon* States to review penal policies that can contribute to overincarceration and overcrowding, in particular regarding so-called "zero-tolerance policies", such as the application of mandatory pretrial detention and mandatory minimum sentences, especially for minor and/or non-violent crimes;

18. *Urges* States to endeavour to reduce pretrial detention, which should be a measure of last resort and for as short a period as possible, by, inter alia, adopting legislative and administrative measures and policies on its preconditions, limitations, duration and alternatives, and by taking measures aimed at implementing existing legislation, as well as by ensuring access to justice and legal advice and assistance;

19. *Underscores* the particular importance of providing appropriate training in the administration of justice, including for prosecutorial and judicial authorities, with a view to raising awareness of and eliminating prejudice and discrimination, ensuring proportionate sentencing and enhancing the implementation of non-custodial measures at the pretrial and post-conviction stages;

20. *Recognizes* that every child and juvenile alleged as, accused of or recognized as having infringed the law, particularly those who are deprived of their liberty, as well as child victims and witnesses of crimes, should be treated in a manner consistent with his or her rights, dignity and needs, in accordance with international law, bearing in mind relevant international standards on human rights in the administration of justice and taking into account the age, gender, social circumstances and development needs of such children, and calls upon States parties to the Convention on the Rights of the Child to abide strictly by its principles and provisions;

21. *Urges* States to consider applying the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, as appropriate, in the design, implementation, monitoring and evaluation of laws, policies, programmes, budgets and mechanisms aimed at eliminating violence against children in the field of crime prevention and criminal justice;

and encourages them to support and to benefit from the programme proposed by the United Nations Office on Drugs and Crime and the United Nations Children's Fund in this regard;

22. *Encourages* States that have not yet integrated children's issues into their overall rule of law efforts to do so, and to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency as well as with a view to promoting, inter alia, the use of alternative measures, such as diversion and restorative justice, and ensuring compliance with the principle that the deprivation of a child's liberty should only be used as a measure of last resort, for the shortest appropriate period of time, and that such decisions must be subject to periodic review of their continuing necessity and appropriateness, as well as to avoid, wherever possible, the use of pretrial detention for children;

23. *Urges* States to systematically integrate children's access to justice in justice sector reforms, rule of law initiatives and national planning processes, such as national development plans and justice sector-wide approaches, and to support it through the national budget;

24. *Encourages* States not to set the minimum age of criminal responsibility at too low an age, bearing in mind the emotional, mental and intellectual maturity of the child, and in this respect refers to the recommendation of the Committee on the Rights of the Child to increase their lower minimum age of criminal responsibility, without exception, to 12 years, as the absolute minimum age, and to continue to raise the lower limit to a higher age;

25. *Urges* States to ensure that, under their legislation and practice, neither capital punishment nor life imprisonment are imposed for offences committed by persons under 18 years of age;

26. *Calls upon* States to consider establishing or strengthening existing independent and child-friendly national monitoring and complaints mechanisms so as to contribute to safeguarding the rights of children deprived of their liberty;

27. *Welcomes* the work on the in-depth global study on children deprived of liberty,[2] and encourages Member States, United Nations agencies, funds, programmes and offices, as well as other relevant stakeholders, to support the elaboration of the study;

28. *Invites* States to provide for human rights training on the administration of justice and juvenile justice, including anti-racist, anti-discrimination, multicultural, gender-sensitive and child rights training, for all judges, lawyers, prosecutors, social workers, immigration, correction and police officers, and other professionals working in the administration of justice;

29. *Also invites* States, upon their request, to benefit from the technical advice and assistance provided by the relevant United Nations agencies and programmes, in order to strengthen their national capacities and infrastructures in the field of the administration of justice, including in addressing overcrowding, overincarceration and violence against children in the field of crime prevention and criminal justice;

30. *Calls upon* relevant special procedures of the Human Rights Council to pay special attention to questions relating to the effective protection of human rights in the administration of justice, including juvenile justice and the human rights of persons deprived of their liberty, and the causes and effects of overincarceration and overcrowding,

[2] See General Assembly resolution 69/157, para. 52 (a).

and to provide, wherever appropriate, specific recommendations in this regard, including proposals for advisory services and technical assistance measures;

31. *Invites* States, when reviewing progress made in the implementation of the 2030 Agenda on Sustainable Development, to consider the causes and effects of overincarceration and overcrowding, including with regard to non-discrimination and persons with increased vulnerability in the administration of justice;

32. *Calls upon* the High Commissioner to strengthen advisory services and technical assistance relating to national capacity-building in the field of the administration of justice, in particular juvenile justice;

33. *Requests* the High Commissioner to submit to the Human Rights Council, at its forty-second session, a report on human rights in the administration of justice, in particular on violence, death and serious injury in situations of deprivation of liberty, drawing on the experience of United Nations and regional human rights mechanisms and seeking the views of States, including on their policies and best practices, civil society, and other relevant stakeholders;

34. *Decides* to continue its consideration of this issue under the same agenda item, in accordance with its annual programme of work.